

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
CONNECT AMERICA FUND	)	WC Docket No. 10-90
)	
A NATIONAL BROADBAND PLAN FOR	)	GN Docket No. 09-51
OUR FUTURE)	
)	
ESTABLISHING JUST AND	)	WC Docket No. 07-135
REASONABLE RATES FOR LOCAL)	
EXCHANGE CARRIERS)	
)	
HIGH-COST UNIVERSAL SERVICE	)	WC Docket No. 05-337
SUPPORT)	
)	
DEVELOPING A UNIFIED	)	CC Docket No. 01-92
INTERCARRIER COMPENSATION)	
REGIME)	
	)	CC Docket No. 96-45
FEDERAL-STATE JOINT BOARD ON)	
UNIVERSAL SERVICE	)	WC Docket No. 03-109
)	
LIFELINE AND LINK-UP	)	WT Docket No. 10-208
)	
UNIVERSAL SERVICE REFORM –		
MOBILITY FUND		

**PETITION FOR RECONSIDERATION OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

**Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW
Suite 501
Washington, D.C. 20005**

December 29, 2011

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
CONNECT AMERICA FUND	)	WC Docket No. 10-90
)	
A NATIONAL BROADBAND PLAN FOR	)	GN Docket No. 09-51
OUR FUTURE)	
)	
ESTABLISHING JUST AND	)	WC Docket No. 07-135
REASONABLE RATES FOR LOCAL)	
EXCHANGE CARRIERS)	
)	
HIGH-COST UNIVERSAL SERVICE	)	WC Docket No. 05-337
SUPPORT)	
)	
DEVELOPING A UNIFIED	)	CC Docket No. 01-92
INTERCARRIER COMPENSATION)	
REGIME)	
	)	CC Docket No. 96-45
FEDERAL-STATE JOINT BOARD ON)	
UNIVERSAL SERVICE	)	WC Docket No. 03-109
)	
LIFELINE AND LINK-UP	)	WT Docket No. 10-208
)	
UNIVERSAL SERVICE REFORM –		
MOBILITY FUND		

**PETITION FOR RECONSIDERATION OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its Petition for Reconsideration with respect to the November 18, 2011 *Report and Order* (“*R&O*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings.¹ Specifically, ITTA seeks reconsideration regarding the limited issue of the areas that are eligible for Connect America Fund (“CAF”) Phase I funding.

¹ *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund,*

Under the approach set forth in the *R&O*, the National Broadband Map (“NBM”)² serves as the first part of a two-part test for determining which areas are unserved for purposes of CAF Phase I support.³ The data reflected on the NBM is supposed to show the availability of broadband services by speed, technology, and number of providers throughout the U.S. According to the *R&O*, any area where the most current version of the NBM shows service by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream is ineligible for CAF Phase I support.⁴ As outlined in the *R&O*, carriers seeking CAF Phase I incremental support “must certify [to the FCC and relevant state authority] that deployment funded through [such] support will occur in areas shown on the most current version of the National Broadband Map as unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to the best of the carrier’s knowledge, are, in fact, unserved by fixed broadband at those speeds.”⁵ The term “fixed broadband” for the purposes of CAF Phase I incremental support includes the following technologies: asymmetric or symmetric xDSL; other copper wireline; cable modem; electric power line; and licensed and unlicensed terrestrial fixed wireless service.⁶

WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208, FCC 11-161 (rel. Nov. 18, 2011) (“*R&O*”).

² See <http://www.broadbandmap.gov>.

³ Rule 54.312(b)(3) states that eligible locations are “shown as unserved by fixed broadband on the then-current version of the National Broadband Map . . .” 47 C.F.R. § 54.312(b)(3). The recipient must also certify that the area is, in fact unserved, but has no opportunity to show that an area shown as served is, in fact, not served. The text of the order adds that the service that precludes a census block from eligibility must have a “minimum speed of 768 kbps downstream and 200 kbps upstream.” *R&O* at ¶ 146. The text and footnotes also explain that the inaccuracy of the National Broadband Map does not change the Commission’s decision. See *id.* at n. 231.

⁴ *R&O* at ¶ 146.

⁵ *Id.*

⁶ *Id.* at n. 231.

Of great concern to ITTA is the fact that it has determined that in some cases the NBM overstates fixed broadband coverage, particularly in areas served by fixed wireless providers. This conclusion cannot be rebutted, which stands in contrast to the second part of the two-part test, which requires the provider receiving CAF Phase I support to independently certify that, to the best of its knowledge, the area where it deploys broadband with the support is, in fact, unserved. It would seem that, if a provider must certify that an area is unserved when the NBM says it is unserved, a provider should also have the opportunity to rebut the NBM and show that an area is unserved and eligible for CAF Phase I support. Simply put, the NBM is not infallible and, consequently, its use should be limited to evidence, but not proof, that an area is served and therefore ineligible for CAF Phase I support.

In addition, the test to identify unserved areas for CAF Phase I differs from the test for CAF Phase II, even though the concerns should be the same -- if an area is eligible for CAF Phase II, it would seem that it should also be eligible for CAF Phase I. There are two salient differences that, taken together, will produce substantially different sets of eligible areas, particularly when applied to fixed wireless services that require line of sight for connectivity: (1) the speed threshold for the competing service is much lower for Phase I -- 768/200 kbps as opposed to 4/1 Mbps, and (2) the burden of proof is much lower for Phase I -- as explained above, the NBM is presumptively true and cannot be rebutted, whereas the CAF Phase II analysis apparently will offer the opportunity to demonstrate that an area is, in fact, unserved.⁷

While the NBM may serve as the starting point for determining the areas that are eligible for CAF Phase I support, the approach adopted by the FCC is too restrictive and potentially at

⁷ The text of the order states that “we will exclude areas where, as of a future date . . . an unsubsidized competitor offers affordable broadband that meets the initial public interest obligations we establish in this Order for CAF Phase I, i.e., speed, latency, and usage requirements.” Those public interest obligations are defined as 4 Mbps downstream and 1 Mbps upstream, etc. *R&O at ¶ 170*.

odds with the Commission’s goal of facilitating rapid broadband deployment in unserved areas. In some cases, the data on the map is inaccurate in that it overstates the service areas where fixed broadband at the required speeds is available. For example, the attached maps show the claimed service areas for fixed wireless providers on the NBM in Iowa and Missouri. Although the technologies used are the same, it is apparent that some providers overstated their service areas by claiming that they offer service to all locations within the radius of their towers despite the fact that they are using line-of-sight technologies that produce service areas that are variegated like the services areas submitted for the NBM by other providers using the same technologies in the same states. It can be seen from the maps of Indianola, Iowa and Lake of the Ozarks, Missouri, that there are a number of census blocks that have no fixed wireless service at all, and many more that have only very limited availability. In these situations, reliance on the NBM without an opportunity for rebuttal would exclude customers that cannot receive broadband today from the benefits of CAF Phase I support, which is the exact opposite outcome from what the Commission intended.

Rather than taking such a flawed approach, the Commission should revise its rules to accommodate all situations where, regardless of whether fixed broadband service availability is reflected on the NBM, consumers do not in fact have access to broadband at the required speeds. Specifically, the Commission should clarify that any area is eligible for incremental support so long as the carrier that would rely on such support can demonstrate that the area is, in fact, “unserved” as defined by the Commission. Allowing this flexibility would support the goals and policies underlying the Commission’s establishment of CAF Phase I support as a transitional distribution mechanism “to immediately start to accelerate broadband deployment to unserved areas across America.”⁸

⁸ *Id.* at ¶ 132.

The Commission itself has acknowledged claims by some parties that “the National Broadband Map is not completely accurate.”⁹ The National Telecommunications and Information Administration (“NTIA”), which collaborated with the FCC on creation of the NBM, has expressed similar concerns. While compilation of the NBM included a “data review and validation process to ensure data integrity,” the agency has made clear that, “[n]otwithstanding the validation process, NTIA cannot guarantee the accuracy of all data.”¹⁰ Furthermore, given that “broadband deployment in the United States is continually changing and developing,” the NBM merely “represents a best-efforts snapshot of the state of broadband deployment at a particular time.”¹¹

In light of these concerns and the important public interests at stake, ITTA submits that, at most, the Commission should treat the NBM as a rebuttable presumption of actual fixed broadband service availability and allow carriers to qualify for incremental CAF support for a particular area if they can provide reasonable evidence at the time they provide notice to the FCC and the relevant state authority of the amount of CAF Phase I support they wish to accept that the area is “unserved” as defined by the Commission. As the Commission has stated, “the ultimate goal of our reforms is to ensure that *all* areas get broadband-capable networks.”¹² The rebuttable presumption approach ITTA proposes in no way hinders this objective. To the contrary, it furthers the Commission’s aim “to spur immediate broadband deployment to as many unserved locations as possible.”¹³

⁹ *Id.* at n. 231.

¹⁰ See <http://www.broadbandmap.gov/about>.

¹¹ *Id.*

¹² *R&O* at ¶ 145.

¹³ *Id.* at ¶ 139.

While the inaccuracies in the NBM may be limited, the FCC should not take that risk at the expense of consumers, especially when it can easily adopt a solution that would eliminate such concerns. The FCC should treat the data reflected in the NBM as a rebuttable presumption of fixed broadband service availability, and obtain additional input from interested stakeholders as to what type of evidence would be satisfactory to show that an area is unserved.¹⁴ Whatever method the Commission adopts should not be unduly burdensome or introduce delay to the process, consistent with its intent “to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider.”¹⁵

In sum, the Commission should reconsider its approach to determining which areas are eligible for CAF Phase I incremental support, adopting the rebuttable presumption standard proposed by ITTA and thus facilitating the Commission’s worthwhile goal of “expanding voice and broadband availability as much[,], as quickly[,], and to as many consumers] as possible.”¹⁶

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

December 29, 2011

¹⁴ For instance, affidavits from potential subscribers indicating that they do not have access to fixed broadband meeting the requisite speed thresholds within the affected area could be a reliable means to demonstrate that the area is unserved.

¹⁵ *R&O* at ¶ 137.

¹⁶ *Id.* at ¶ 145.